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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/506,598	06/03/2005	Andreas Meisel	BB-117	1867

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EXAMINER	
ROBERTS, LEZAH	
ART UNIT	PAPER NUMBER
1612	

NOTIFICATION DATE	DELIVERY MODE
04/01/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

euspto@slspatents.com

Office Action Summary	Application No.	Applicant(s)	
	10/506,598	MEISEL ET AL.	
	Examiner	Art Unit	
	LEZAH W. ROBERTS	1612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *22 December 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *15,18,20,21 and 34-38* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *15, 18, 20, 21 and 34-38* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Applicants' arguments, filed December 22, 2009, have been fully considered. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims

Claim Rejections - 35 USC § 103 – Obviousness

Claims 15, 17, 18, 20, 21 and 32-38 stand rejected under 35 U.S.C. 103(a) as being unpatentable over P. Langhorne et al. (Age and Ageing 2002) in view of Fong (The Journal of Infectious Diseases, 2000, Vol. 181, Suppl. 3, pp. S514-S518 as cited in the IDS). Claim 33 has been cancelled.

Applicant's Arguments

Applicant argues there is no indication that the patients disclosed by Langhorne et al. recently had a stroke. It can be seen in the reference that an antibiotic is administered in the event of a "suspected" infection. Certainly, an infection would not be "suspected" unless there were clinical symptoms (as is required by claim 34), nor would

an infection be "suspected" if there was, in fact, no infection at all (as is required by claim 38). Thus the action's assertion in regard to claims 34 and 38 is incorrect. The reference describes clinical symptoms. This is very different from what is claimed in claims 34 and 38. The Langhorne et al. reference provides no indication that antibiotics are, or should be, administered, as a matter of course, immediately following a stroke, and in the complete absence of any indication that an infection is present. Fong pertains to chronic bacterial infections that are the cause of the stroke, which is completely different from the present invention. The teachings of Fong may be relevant for efforts to develop treatments against atherosclerosis for patients suffering from chronic bacterial infections but they are not relevant to patients who have just suffered a stroke. Specifically, Fong does not disclose or suggest a method of treatment following an acute stroke in a patient not having a pre-existing chronic infection. In this case, the applicants respectfully submit that there is no reason to modify the cited references to arrive at the current invention and, thus, there is no prima facie case of obviousness. Also, unlike the teachings of Fong, the present invention is not related to chronic infections that are present before a stroke occurs. Accordingly, there would be no reason to combine the teachings of Fong with those of Langhorne et al. and, even if the combination were made, it would not lead to the current invention.

Examiner's Response

In regard to the indication of patients not have recently had a stroke; the reference is directed to protocols used in early management after a patient has had a

stroke. Further the reference defines early management as 0 to 3 days, which encompasses the 72 hours recited in the instant claims. Claims 34 and 38 are the only two claims reciting no signs of infection is present in the patient, thus Applicant's arguments in regard to signs of infection do not apply to the other claims. In regard to Fong, Fong specifically states that pneumoniae is a symptom of atherosclerosis, cardiovascular disease and stroke, not just atherosclerosis. Disclosing a symptom of a stroke indicates the symptom occurs after one has had a stroke. In KSR v. Telefex, 82 USPQ2d 1385, 1397 (U.S. 2007), the Supreme Court has held that when there is market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person has good reason to pursue known options within his or her technical grasp. Under these conditions, "obviousness to try" such options is permissible. In this instance, a market pressure exists in the medical/pharmaceutical industries to treat stroke patients. Accordingly, one of ordinary skill in the art would recognize that based on the combination of references, it would have been obvious to use moxifloxacin as the antibiotic administered to a patient 0 to 3 days after a stroke as disclosed by Langhorne et al. based on the knowledge that it is known that C. pneumoniae is a complication of stroke. It would have been obvious to administer the drug as soon as possible even if no symptoms were seen or suspected, encompassing claims 34 and 38, because it would be highly probable that a patient would developed pneumoniae after the stroke. Therefore it would have still been obvious to administer an antibiotic without the sign of symptoms or no clinical signs of infection.

Claims 15, 17, 18, 20, 21 and 34-38 are rejected.

No claims allowed.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LEZAH W. ROBERTS whose telephone number is (571)272-1071. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frederick F. Krass can be reached on 571-272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lezah W Roberts/
Examiner, Art Unit 1612

/Frederick Krass/
Supervisory Patent Examiner, Art Unit 1612